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In re Application of :
Sallaway, et al. : DECISION ON APPLICATION
Application No. 09/751,037 : FOR PATENT TERM ADJUSTMENT
Filed: December 29, 2000 :
Attorney Docket No. P04756 (NATI15- :
04756) :

This decision is in response to the "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT", filed January 29, 2008, notifying the Office of an error in Applicants' favor in the initial determination of patent term adjustment under 35 U.S.C. § 154(b).

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is **one thousand nine hundred eighteen (1918)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 29, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is one thousand nine hundred ninety-nine (1999) days.

The Office initially determined a patent term adjustment of one thousand nine hundred ninety-nine (1999) days based on an adjustment for PTO delay of eight hundred eleven (811) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R.

§ 1.703(a)(1), ninety-five (95) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. 1.703(a)(2), two hundred sixty-one (261) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(4), and eight hundred thirty-nine (839) days pursuant to 35 U.S.C. 154(b)(1)(C)(iii) and 37 C.F.R. § 1.703(b)(4), reduced by four (4) and three (3) days of applicant delay pursuant to 35 U.S.C. § 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b).

Applicants state that the total PTA should be reduced due to the filing of a corrected Appeal Brief. Applicants filed an Appeal Brief on September 1, 2005. However, on October 18, 2005, the Office mailed a Notification of Non-Compliant Appeal Brief. In reply, applicants filed a corrected Appeal Brief on November 21, 2005.

1.704(c)(7) states that the following will be considered a failure to engage in reasonable efforts to concluded examination:

Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

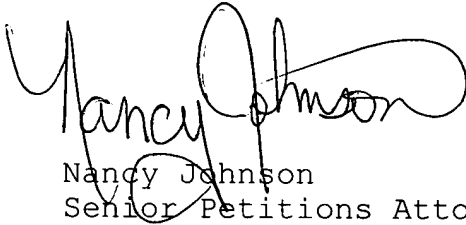
Here, the date after the reply having an omission was filed was September 2, 2005 (the Appeal Brief), while the date that the reply correcting the omission was filed was November 21, 2005. Accordingly, applicant delay of eighty-one (81) days should have been assessed.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is **one thousand nine hundred eighteen (1918)** days (2006 (811+95+261+839) days of PTO delay, reduced by 88 (4+3+81) days of applicant delay).

No petition fee was required and none has been charged. The Office thanks Applicants for their good faith and candor in bringing this matter to the attention of the Office.

The matter is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this letter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with a large loop at the end of the last name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Monday
Date: 3/31/2008

PALM INTRANET

Time: 09:46:09

PTA Calculations for Application: 09/751037

Application Filing Date:	12/29/2000	PTO Delay (PTO):	2006
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	7
Post-Issue Petitions:	0	Total PTA (days):	1918
PTO Delay Adjustment:	-81		

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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